IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 391 of 2000

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAMRUNISSA D/O MEHMUDHUSSAIN

Versus

AYUBBHAI SHAHID MOHMADKHAN

Appearance:

MRS SHILPA J UNWALLA for Petitioner No. 1

Respondent No. 1-Served

MR HL JANI APP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/12/2001

ORAL JUDGEMENT

Feeling aggrieved by the order dated 18th July, 2000 made by the learned Judge, Family Court No. 2, Ahmedabad, the petitioner-applicant has preferred the present Revision Application.

At the time of admission of this Revision Application, a preliminary objection was raised by the prosecution that the Revision Application in the subject matter was not maintainable and an appeal should lie. This Court [Coram : D.P Buch, J.] in its order date 11th October, 2000 was pleased to negative the contention and to hold that the Revision Applciation in the subject matter was maintainable.

The petitioner is the wife of the respondent no. 1. The petitioner and the respondent no. 1 were married sometime in the year 1996. The petitioner had made Misc. Application No. 202 of 1998 before the learned Metropolitan Magistrate, Ahmedabad for maintenance under sec. 125 CrPC for self and the minor son. It was claimed by the petitioner that the respondent no. 1 had neglected to maintain the petitioner and the minor son. In the said application, the petitioner made prayer for interim maintenance which was partially allowed on 31st December, 1999. The petitioner was awarded monthly maintenance of Rs. 500/= and the minor son was awarded a monthly maintenance of Rs. 200/=. Inspite of the said order, the respondent no. 1 neglected to pay maintenance to the petitioner. Feeling aggrieved, the petitioner filed Misc. Application No. 7378 of 2000 in the Family Court, Ahmedabad under Sec. 125 (3) CrPC. The learned Judge, under his order dated 18th July, 2000 observed that the respondent no. 1 had refused to pay maintenance. Considering five days' simple imprisonment for each month of default, the respondent no. 1 was sentenced to undergo simple imprisonment for 65 days. Feeling aggrieved, the petitioner has preferred the present Revision Application.

It is contended that all along, the respondent no. 1 has refused to cooperate in the proceedings in as much as even the summons/warrants issued by the Court below could be served after great difficulty. The respondent no. 1 had deliberately defied the order of the learned Judge. The sixty five days' imprisonment ordered by the learned Judge is too trivial a sentence and shall have no deterrent effect upon the respondent no. 1. The petitioner has, therefore, prayed for enhancement of the sentence imposed upon the respondent no. 1.

I see no justification in the claim for enhancement of the sentence imposed by the learned Judge. The Revision Application is dismissed. Rule is discharged.

[Ms. R.M Doshit, J.]

Prakash*